bill was originally founded than the verbal logic of the New York rule which holds there can be no cloud to remove unless the complainant's title be threatened by a *prima facie* outstanding instrument. See 3 Pom. Equity Juris. Sec. 1399. The reasons assigned in *Scott* v. *Onderdonk*, supra, for the refusal of the court to grant relief are that the damage to the complainant is too speculative unless it can be shown that his title is jeopardized by a *prima facie* instrument, in which case he will not be compelled to hazard the loss of his evidence. While such an argument might very properly entitle a complainant to a bill to perpetuate testimony, *Angel* v. *Angel* (1822) 1 Sim. & St. 84, it really has no bearing upon an application for a removal of a cloud upon title, which was devised for an entirely different purpose—to restore to a landowner the enjoyment of the full marketability of his lands. The recognition of the principle here contended for would seem to lead logically to the view taken by the Supreme Court in relieving a landowner against a mere oral claim and of establishing by judicial determination, as a matter of record, a title resting in adverse possession although such title was not specifically controverted by the defendant nor assailed by any actions for possession. *Sharon* v. *Tucker* (1891) 144 U. S. 533.

EXCESS OF PRIVILEGE AND IMPLIED MALICE IN LIBEL.—The question as to what extent the interests of society demand that the law should extend the privilege of self protection in libel, is suggested by a recent case in Georgia. An action was brought by a discharged conductor for damages suffered by reason of a bulletin posted by defendant company in its offices, implying that the plaintiff had converted certain tickets, and requiring that the same should be refused by passenger conductors. Defendant's offices were open to the public and all employees were obliged to examine bulletins of this nature. A jugdment based on a verdict for the defendant was reversed. *Sheftall* v. *Cent. of Ga. Ry. Co.* (1905) 51 S. E. 646.

The court recognized the well settled principle that defamation in self-defence is conditionally privileged, and applied the qualifying rule that the statement must be limited to those to whom the interest to be subserved requires that the information be communicated. But the court seems to consider that excess of privilege under the circumstances should be evidence to the jury of the bad faith of the defendant. Whether or not this is material depends on the larger question of the necessity in such an action of proving malice. While it has been often held that upon the publication of defamatory words the law will presume malice, *Toogood* v. *Spyring* (1834) 1 Cromp. M. & R. 181, this is obviously fictitious. When, on such a theory of implied malice, a newspaper proprietor is held liable for the typographical error of his printer, *Shepheard* v. *Whitaker* (1875) 32 Law Times 402, the law clearly presumes what does not in fact exist.

To the roman origin of this branch of our legal system its peculiarities may be ascribed. 6 Am. Law Rev. 593, 597. To the civil jurist an intent to injure the plaintiff was a necessary element of an action for *injuria*, Justinian's Digest, Lib. XLVII, tit. x, fr. 3, §§ 3, 4, and the bona fides of the defendant was a bar to an action for slander

ib., Lib. XLVII, tit. x, fr. 15. §13. In England for many centuries, defamation or "diffamation" was cognizable only in the ecclesiastical courts, Townshend on Slander, §§ 10–12, a forum wherein the defendant was punished solely "pro salute animæ" *Palmer and Thorpe*, 4 Co. Rep. 20. Unless, therefore, he was guilty of moral wrong, viz., malice, he had committed no offense in the eyes of the spiritual law. Ayliffe's Parergon, p. 212. Even after the invention of the printing press had forced the Star Chamber to take over jurisdiction of actions of libel, the principles of the Roman law remained in force, 3 COL. LAW REV. 563, and unless the plaintiff could prove that the defendant had been actuated by malevolent motives, he could not recover. See *Crawford* v. *Middleton* (1678) 1 Lev. 82. But in either case it was apparent the plaintiff's reputation had been damaged. The courts were confronted on the one hand with a constantly increasing number of cases of *damnum absque injuria;* on the other hand they were hampered by the traditional necessity of a moral transgression. The fiction of implied malice represents a compromise between the spiritual and the practical. 4 COL. LAW REV. 35 et seq.

Modern legal thought has advanced to the point of regarding implied malice as meaning mere absence of legal excuse, Pollock on Torts (6th. Ed.) 244, but where the occasion is conditionally privileged, the plaintiff, it is said, may still prove actual malice. *Bacon* v. *Michigan Central R. Co.* (1887) 66 Mich. 166. On the other hand if the publication be absolutely privileged the defendant's motives may not be investigated. *Scott* v. *Stansfield* (1868) L. R. 3 Ex. 220; Burdick's Law of Torts 322. An inconsistency which may only be explained on grounds of public policy. Holmes' Common Law, p. 139.

Assuming, in the principal case, that the defendant had exceeded its privilege, by extending the publication in question to others than those directly interested (however, see Odgers on Libel, 3rd Ed., 271 and cases cited), still, the court is confusing the issue when it suggests, under the circumstances, that the bona fides of the defendant is pertinent. If the privilege is exceeded, no amount of good faith on the defendant's part should prevent the plaintiff's recovery. *Hebditch* v. *MacIlwaine* [1894] 63 L. J. R. Q. B. 587. So on principle the better view would seem to be that the excess of privilege should not have aided the plaintiff as evidence of malice on the defendant's part, b i because it was a publication to parties in respect of whom no privilege ever existed. *Williamson* v. *Freer* (1874) L. R. 9 C. P. 393; Pollock on Torts (6th Ed.) p. 268.

FORCIBLE ENTRY OF HOUSES BY OFFICER WITHOUT WARRANT.—The extent to which the law will permit the breaking into of houses by police officers without a warrant has always been closely restricted. So far as execution of civil process was concerned a man's dwelling was literally his castle and no one might enter against his will. The immunity thus conferred however was restricted to the members of the household and permanent lodgers and did not extend to strangers and visitors within the house. Foster's Crown Laws 320; *Oystead* v. *Shed* (1816) 13 Mass. 520. In criminal process the inviolacy of the dwelling was forced to give way before those in possession of the "King's